

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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RONALD LEE ALLEN,

Plaintiff,

vs.

CLARK COUNTY DETENTION CENTER;
CLARK COUNTY, NEVADA; DR.
MCGROREY; NAPHCARE; KITE NURSE
CORNELIUS; NURSE NORMA; REBECCA
NEWMAN, R.N.; DR. RUSSO; and SHERIFF
GILLESPIE,

Defendants.

Case No.: 2:10-cv-00857-RLH-GWF

ORDER

(Motion for Attorney's Fees—#101)

Before the Court is Defendants Clark County Detention Center ("CCDC") and Sheriff Gillespie's **Motion for Attorney's Fees** (#101, filed Feb. 3, 2011). Plaintiff Ronald Lee Allen did not file an opposition.

Allen brought this action against Defendants under 42 U.S.C. § 1983, alleging that his constitutional rights were violated while detained at the CCDC. This Court subsequently entered an order dismissing Allen's claims against CCDC and Gillespie. The Court found that CCDC, as a building, is not subject to liability, and that because Allen made no direct allegation against Gillespie he failed to state a valid claim for relief. CCDC and Gillespie now ask the Court

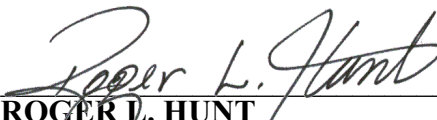
1 for an award of attorney's fees pursuant to 42 U.S.C. § 1988, which gives the Court discretion to
2 award attorney's fees to a party prevailing in a § 1983 action. CCDC and Gillespie argue that
3 because the Court dismissed Allen's § 1983 claims against them they are prevailing parties under
4 § 1988, entitling them to attorney's fees.

5 However, the Court finds that an award of attorney's fees is not proper under the
6 circumstances. The Court has recently permitted Allen to file an amended complaint in which he
7 renamed Gillespie as a Defendant. Therefore, while Gillespie may have prevailed on his earlier
8 motion to dismiss, the Court finds that he has not yet prevailed in this case. In addition, Allen's
9 claims against CCDC and Gillespie were made when he had no counsel. Thus, although his initial
10 allegations against CCDC and Gillespie were technically insufficient that does not mean that
11 Allen's claims are frivolous or unreasonable. Therefore, the Court declines to exercise its
12 discretion to award attorney's fees to CCDC and Gillespie.

13 Accordingly, and for good cause appearing,

14 IT IS HEREBY ORDERED that Defendants CCDC and Gillespie's Motion for
15 Attorneys' Fees (#101) is DENIED.

16 Dated: August 30, 2011

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18 **ROGER L. HUNT**
19 **United States District Judge**
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